the parties); *Quarman v. Burnett* (1840) 6 M. & W. 499 (custom, as in case of liveryman); see Huffcut, *Agency* (2d ed. 1901) 280. Nevertheless it has been generally recognized that if it can be shown where the actual direction of the work in fact lay, the above tests will be disregarded. *Green v. Sansom* (1899) 41 Fla. 94, 25 So. 322. The English cases have kept nearer the elementary principle that the control should be determined from all the facts in each case, and only occasionally applied standardized tests based on certain special facts. *Cf. Rourke v. White Moss Colliery Co.* (1877) 2 C. P. D. 205. The instant case indicates a tendency to revert to the original underlying principle, of which some American jurisdictions have never lost sight. *Cf. Driscoll v. Towle* (1902) 181 Mass. 416, 63 N. E. 922. And the American cases seem to be tending towards the re-simplification which the leading case typifies. *Cf. Danville Light, Power & Traction Co. v. Baldwin* (1917) 178 Ky. 184, 198 S. W. 713; *cf. Campbell v. New York, New Haven & H. R. R.* (1917) 92 Conn. 322, 102 Atl. 597.

MORTGAGES—INSTALLMENT MORTGAGES—DEFAULT IN PAYMENTS.—The mortgagee conveyed land to the defendant taking an installment mortgage which gave the mortgagee, on default of any of the installments, the option of declaring the whole debt due and of foreclosing at once under a power of sale contained in the mortgage. The defendant defaulted and gave notice of future inability to pay. Thereupon, by agreement between the parties the defendant remained in possession and no foreclosure proceedings were instituted. The plaintiff brought a bill to enforce a mortgage given subsequently by the defendant on his crops. *Held,* that the plaintiff could have no relief because the mortgagee had a landlord's lien which took priority by statute. *Hughes & Tidwell Supply Co. v. Carr* (1919, Ala.) 83 So. 472.

In the instant case the court held that by the default in the payment of the installment the mortgage was discharged of its condition and the mortgagee's estate became absolute as of the day of the delivery of the mortgage, subject only to the mortgagor's equity of redemption. *Cf. Thompson & Co. v. Union Warehouse Co.* (1895) 110 Ala. 499, 18 So. 105; *cf. Dennis v. McEntire Mercantile Co.* (1914) 187 Ala. 314, 65 So. 774. It does not appear that the mortgagee exercised his power to declare the entire debt due. Generally the holder of a power must exercise it to derive benefit therefrom. Where an offeree is given a power by acceptance to impose duties on the offeror and create correlative rights in himself, he must exercise this power within the prescribed time, or, if no time is specified, within a reasonable time if he wishes to derive the benefits from it. See Corbin, *Offer and Acceptance* (1917) 26 YALE LAW JOURNAL, 169, 183; see also Corbin, *Conditions in the Law of Contract* (1919) 28 YALE LAW JOURNAL, 739, 763. So also in the case of an option. See Corbin, *Option Contracts* (1914) 23 YALE LAW JOURNAL, 641. And an option alone is not a "vested interest" within the rule against perpetuities. To "vest" the "interest," actual exercise of the option-holder's power is necessary. COMMENT (1919) 29 YALE LAW JOURNAL, 87, 90. In the case of gift it is presumed that the donee has exercised his power of acceptance. But it can be shown that he did not. See COMMENT (1920) 29 YALE LAW JOURNAL, 549. Where the contract of a promissory note provides that on default of any installment of interest the holder may at his option declare the whole debt due, this power must be exercised within a reasonable time after default, or it lapses, and the note is not due. *Crossmore v. Page* (1887) 73 Calif. 213, 14 Pac. 787. In the case of mortgages where power is given to declare the whole debt due on default in payment of part of the principal or of interest, foreclosure merely as to the installment due seems to destroy the power to declare the whole debt due or foreclosure for it. See *Brand v. Smith* (1894) 99 Mich. 395, 399, 58 N. W. 363. If tender is made before such declaration the option is thereby extinguished.

Trinity County Bank v. Haas (1907) 151 Calif. 553, 91 Pac. 385. Thus it would seem that under a sound interpretation such a power as was given by the mortgage provision in question must be exercised to derive the benefit from it. A mortgage may provide that on default of any payment title is to become absolute or it may provide that the mortgagor may at his option declare the whole amount due and foreclose for it. The court in the instant case seems in error in failing to make any distinction between the two.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—INFANTS.—The defendant's servant, while operating an automobile in the course of his employment, negligently ran over and injured the plaintiff's eleven-year-old son, from which injuries the son died. The plaintiff then brought an action for the wrongful death. *Held,* that the plaintiff should not recover, because his son had been guilty of contributory negligence. *Ferrand v. W. H. Cook & Co.* (1919, La.) 83 So. 362.

The plaintiff sued the defendant for an injury to her four-year-old son, caused by the negligent operation of one of the defendant's trains. The defendant endeavored to prove contributory negligence. *Held,* that the plaintiff should recover, because the child could not be guilty of contributory negligence. *Ryan v. Louisiana Ry. & Nav. Co.* (1919, La.) 83 So. 371.

The law of contributory negligence applies equally to infants and adults, except where a child is too young to be capable of exercising judgment or discretion. But the age, judgment, intelligence, and in some cases the experience, of the particular child must be taken into account in determining his negligence. See *Karpeles v. Heine* (1919) 227 N. Y. 74, 124 N. E. 101, 102, (1919) 29 YALE LAW JOURNAL, 234 (effect of employment of an infant on his contributory negligence). It is generally held that a child of six years or under, is incapable of contributory negligence. *Chicago City Ry. v. Tuohy* (1902) 196 Ill. 410, 63 N. E. 997; see *Great Southern R. R. v. Snodgrass* (1918, Ala.) 79 So. 125, 127; *contra, DiMaio v. Yolen Bottling Works* (1919) 93 Conn. 597, 107 Atl. 497. A statute classifying specified acts as contributory negligence in law has been construed to apply to a boy less than seven years of age. *Erie R. R. v. Hilt* (1918) 38 Sup. Ct. 435, (1918) 27 YALE LAW JOURNAL, 1095. Whether or not a child between seven and fourteen years is guilty of contributory negligence is a question of fact for the jury. See *Johnson's Adm. v. Rutland Ry.* (1919, Vt.) 106 Atl. 682, 684. It would seem that a child over fourteen is presumed to be capable of using some degree of reasonable care for his own protection. See *Sherris v. Northern Pac. Ry.* (1918) 175 Pac. 269, 270, 55 Mont. 189, 194. It is submitted that a practical test to determine an infant's contributory negligence is to require the use of that degree of care which would commonly be exercised by the average child of his age, intelligence, and experience. An objective test which is sometimes employed requires of infants that degree of care which is commonly exercised by the average child of his age. *Cf. Roberts v. Ring* (1919, Minn.) 173 N. W. 437; see 1 Shearman & Redfield, *Law of Negligence* (6th ed. 1913) 174. It seems, however, that the subjective test is the better because infants differ so much more than adults in their subjective selves. The instant cases represent the existing law and seem sound. On the doctrine of imputing the parents' negligence to the child, see (1914) 23 YALE LAW JOURNAL, 553; (1915) 24 *ibid.*, 259.

NEGLIGENCE—PHYSICIANS AND SURGEONS—DEGREE OF CARE.—In an action for alleged malpractice in an operation, the court instructed the jury that it was the defendant's duty to exercise such reasonable skill and care as an ordinarily skillful and careful surgeon is accustomed to exercise under like circumstances. The defendant took exceptions to the instruction. *Held,* that the exception